

## REMARKS

Claims 14 and 19 have been amended. No claims have been added or deleted. Claims 1–31 remain pending in the application. Applicants respectfully request reconsideration of the application as amended.

### Summary of Amendments to the Claims

Claim 14 has been amended to add the limitation that the basket has no legs operatively associated with it which lie on a side of the plane opposite the one side of the plane defined by the continuous loop. Support for this limitation is found in the drawings as originally filed, *e.g.*, FIGS. 15, 18, 19, and 21–23.

Claim 19 has been amended to address an issue with respect to proper antecedent basis. Claim 19 now properly introduces the term “actuator.”

### Claim Rejections - 35 USC § 112

The Examiner has rejected Claim 19 under 35 U.S.C. 112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter which applicant regards as the invention. More specifically, in Claim 19, line 2, the term “said actuator” is alleged to lack prior antecedent basis.

Claim 19 has now been amended to properly introduce the term “actuator,” and the rejection is believed overcome.

### Claim Rejections - 35 USC § 102

Claims 14-16 and 19 are rejected under 35 U.S.C. 102(e) as being anticipated by U.S. Patent No. 6,174,318 to Bates *et al.*

With respect to Claims 14-16 and 19, the Examiner contends that *Bates* discloses a medical retrieval device (FIGS. 2 and 15) comprising a handle (12) a hollow sheath (14) extending forward from the handle, the sheath having a forward end (20) a slide (26) attached to the handle for longitudinal movement with respect thereto along a path between rearward location and forward location; and a basket (10) located at a forward end of the sheath, the basket having at least three legs (30, 32, 34), two of the legs (30, 32) comprising a continuous loop lying in a plane, the ends of the loop being operatively connected to the slide, and a third leg (34) having a forward end joined to the continuous loop at an intermediate location thereon and a rearward end being operatively connected to the slide, all of the legs of the basket are located on one side of the plane defined by the continuous loop; as best seen in FIGS 2-5; and as set forth in column 5, lines 7-67 and column 6, lines 1-67.

Claim 14 has now been amended to add the limitation that the basket has no legs operatively associated with it which lie on a side of the plane opposite the one side of the plane defined by the continuous loop. *Bates* has a leg (28) operatively associated with it which lies on a side of the plane opposite the one side of the plane defined by the continuous loop. Therefore Claim 14 now distinguishes over *Bates*, either alone or in combination with any of the other references of record, and Claim 14 is therefore believed allowable.

### Claim Rejections - 35 USC § 103

Claims 17–18 are rejected under 35 U.S.C. 103(a) as being unpatentable over *Bates*.

With respect to claims 17 and 18, the Examiner acknowledges that *Bates* does not teach of two different cross-sections — round and flat — for the legs; as claimed by applicant. However, the Examiner states that applicant failed to establish the criticality of such cross sections; and the examiner believes that any cross-sections could have been used since the device would have performed equally as well with any given configurations.

Irrespective of whether applicants have shown the criticality of two different cross-sections for the legs, *Bates* does not teach or disclose two different cross-sections, and Claims 17 and 18 are further patentable for the reasons set forth above with respect to Claims 14, 16, and 19. Claims 17 and 18 are therefore believed allowable.

Claims 27–31 are rejected under 35 U.S.C. 103(a) as being unpatentable over U.S. Patent No. 5,163,942 to Rydell in view of *Bates*.

With respect to Claim 27, it is the Examiner's position that *Rydell* discloses a medical retrieval device (110) comprising a handle (112) a slide (132) attached to the handle for longitudinal movement with respect thereto along a path between a rearward location and a forward location; as best seen in Fig.2, means (146) movably mounted to the slide and operatively associated with at least one of the basket legs for affecting translational movement of the at least one of the basket legs with respect to the slide. The Examiner acknowledges that *Rydell* does not teach of a basket having three legs as claimed by applicant. However, in similar art, *Bates* evidences the use of a basket with at least three legs to allow material to be captured more readily and easily. Therefore, according to the

Examiner, given the teaching of *Bates*, it would have been obvious to one having ordinary skill in the art at the time the invention was made to replace the basket of *Rydell* with the basket of *Bates* to allow material to be captured more readily and easily.

With respect to Claims 29–31, it is the Examiner's contention that the combination of *Rydell* and *Bates* teaches all the limitations as set forth.

The Examiner's rejections of Claims 27–31 are respectfully traversed, for there is no teaching or motivation to combine *Rydell* and *Bates* in the manner suggested by the examiner, the references cannot be combined in the manner suggested by the Examiner, and furthermore even if the references were combined they would not result in the claimed invention. Finally, if the references were somehow combined, they would destroy one of the references for its intended purpose.

*Rydell* discloses a belt-type retrieval device. Rotating the wheel (146) rotates the drive roller (168) which, in turn, drives the belt (128). The rotating belt rotates an organ held by the grasping loop. However, it is a stated purpose of the *Rydell* device that the rotating belt maintain a fixed diameter of the grasping loop (see, e.g., Claim 1, subparagraph (d)). This is inconsistent with the operation of the stone basket of *Bates*. *Bates* does not have a continuous belt and thus does not have a structure which can engage the drive mechanism of *Rydell*. Further, because the stone basket of *Bates* must change its size and shape in order to grasp a stone, a person of ordinary skill in the art would not be motivated to attempt to adapt it to a mechanism which rotates while maintaining a fixed diameter. Finally, the "legs" of the belt of *Rydell* exhibit dependent movement, i.e., if one leg moves, the other leg necessarily moves in the opposite direction because the legs are connected. Thus if one were somehow to

combine *Bates* and *Rydell*, *Bates* would be robbed of one of its essential features, the ability of at least one of its basket legs to move independently of at least one of the other legs (see, e.g., the Abstract of *Bates*). Thus there is no teaching or motivation to combine *Bates* and *Rydell* in the manner suggested by the Examiner. *Bates* and *Rydell* cannot be combined in the manner indicated by the Examiner, and even if they were somehow to be combined, the resulting structure would not be the claimed invention. Finally, combining them would destroy the *Bates* reference for its intended purpose of having one basket leg movable independent of the other basket legs.

For each of these reasons, the Examiner's rejection is improper and must be withdrawn. Claims 27–31 are therefore believed allowable.

### **Allowable Subject Matter**

Applicants appreciate the Examiner's indication that Claims 1–13 and 20–26 are allowed.

A request for a one-month extension of time for filing a response, together with the fee required by 37 C.F.R. 1.17(a)(1), is enclosed. The time for filing a response is thereby extended to May 9, 2003. The foregoing response is therefore timely filed.

The foregoing is believed to be fully responsive to the Office Action dated January 9, 2003. For the reasons set forth above, the present application is believed to be in condition for allowance. Reexamination and reconsideration of the application is requested, and allowance of the claims at an early date is courteously solicited.

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